IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 2878 OF 2003

IN

PETITION NO. 887 OF 2000

Smt. Shashikala A. Kisan Awad .. Petitioner.

vs.

Divisional Office,
Central Railway,
Personnel Branch,
CST, Mumbai. .. Respondents.

Ms. Asha Mehta for petitioner.
Mr. S.C. Dhawan with T. J. Pandian
for respondents.
Mr. D.R. Mishra for second wife i.e. Petitioner
in MPT (L) No. 162 of 2003.

CORAM : S.U. KAMDAR, J.
DATE : 2nd August, 2005.

ORAL JUDGMENT :

. The present notice of motion has been taken out by the petitioner inter alia seeking direction that the respondents should accept the succession certificate granted by this Court on 29.6.2001 and

consequently pay the dues of the deceased to the petitioner who is the widow.

2. Some of the material facts in the present case are as under :-

3. One Shri Kisan Awad was working as the ex-Diesel Mechanic in the respondent railways. He died while in service on 29.12.1999. On his death, the petitioner being a widow made an application for the dues being paid over to her and a minor daughter. However, one Mrs. Mangala Kisan Awad also along with her son claimed to be the wife of the said deceased employee and filed a claim before the Railway Authorities. The Railway Authorities directed the parties to obtain succession certificate from the Court of Competent jurisdiction. Accordingly, the petitioner herein filed a petition for succession certificate being Testamentary Petition No. 887 of 2000. This Court by an order dated 29.6.2001 granted the petitioner the succession certificate.

4. After obtaining the succession certificate, the petitioner filed a fresh claim on 16.7.2001 with the railway authorities for the payment of his dues on his death. However, the railway authorities though admitted the amount due and payable under

their letter dated 6.6.2002 being the amount of Rs. 2,04,737/- but inspite of production of the succession certificate issued by this Court which is the Court of competent jurisdiction did not make payment of any amount to the petitioner herein.

5. In the aforesaid circumstances, the petitioner has taken out the present notice of motion in this Court for the aforesaid reliefs.

6. In the meantime it seems that the said Mangala Kisan Awad filed Misc. Petition being Misc. Petition Lodging No. 162 of 2003. The said petition was lodged in this Court on 4.3.2003. The said petition was filed inter alia seeking cancellation and/or to revoke the said succession certificate issued in favour of the petitioner herein. After filing the said petition, the said Mangala Kisan Awad informed the railway authorities that such a petition has been filed and because of the same the respondent did not release the payment in favour of the petitioner though the petitioner was holding the succession certificate. It is an admitted position before me that this Court has not granted any stay. and succession certificate is in force. It is also an admitted position before me that the said miscellaneous petition is not even numbered even after two years have expired.

7. By an ad-interim order dated 5.2.2005 this Court directed the respondent to deposit the amount due and payable in this Court and the amount is directed to be invested in the fixed deposit. Accordingly, the respondent has deposited a sum of Rs. 1,71,000/- admittedly due and payable after effecting various recoveries. The said amount is lying deposited in this Court.

8. The said amount has been deposited by the petitioner in this Court in March, 2004. It is during the period i.e. 16.7.2001 that the petitioner made an application for payment of the said amount after obtaining the succession certificate on 29.6.2001 till the date of deposit i.e. sometime in March 2005 the respondents withheld the said amount for no reasons whatsoever. The petitioner has been wrongfully deprived of the said dues and the respondents in spite of having succession certificate in favour of the petitioner, refused to make payment on frivolous ground that there is another claimant known as Mrs. Mangala Kishan Awad.

9. In the present notice of motion the respondents have filed an affidavit in reply and it has been inter alia contended that because of the pending petition being Petition Lodging No. 162 of 2003, the respondents did not make payment to the

petitioner. It is further stated that the officer concerned was acting cautiously in not making payment even though the petitioner was holding a valid succession certificate. Various rules are also produced in support of the affidavit in reply inter alia contending that the recoveries sought to be effected are valid and justified.

10. In so far as the revocation petition Lodging No. 162 of 2003 is concerned, it is very significant to note that even though the petitioner has filed the same two years back, it has not been prosecuted at all. It is also surprising that the office of the Prothonotary and Senior Master, High Court, Bombay, did not take action for dismissal of the petition for non-removal of office objections under the provisions of High Court Rules for almost two years. This in-action on the part of the office has resulted in the said petition continued to remain on record and never came up for hearing before the Court since it was not numbered. This Petition (Lodging) No. 162 of 2003 is still pending on a lodging number. This motion was heard on earlier four occasions. None appeared for the petitioner in the said petition Lodging No. 162 of 2003. However, today the learned Advocate appearing for the petitioner sought time to remove the office objection in the said Misc. Petition No. 162 of 2003. I have declined to give time because the

process of the Court cannot be operated upon in such a manner that it defeats substantial justice in favour of the party who is holding the succession certificate. If the said petitioner Smt. Mangala Awad was really genuine in prosecuting her claim she would have pressed that petition but she did not prosecute the same for the entire period of two years. I am dealing with a case where balance dues of the deceased which are payable to the widow are withheld for a long time. I therefore declined to grant time in the aforesaid circumstances and I dismiss the same for non-prosecution and for non-removal of office objections.

11. Now turning to the so called cautious approach of the railway authorities, I am of the opinion that the approach of the railway authorities is absolutely erroneous. The railway authorities being a State is required to obey and follow the orders issued by the Court of competent jurisdiction. It is not within their jurisdiction to ignore the orders of the Court on their own consideration when somebody else is claiming the right. It is well settled that the person claiming the rights contrary to the orders passed by the Court, is required to approach the concerned Court for modification, variation and/or for cancellation of the orders and not the authorities such as the respondents herein can take upon itself a

jurisdiction to ignore the court orders as invalid. It is most unfortunate in the present case that the legal heirs of the deceased who was a government servant have not been paid the dues though he has expired almost more than five years ago. It is equally unfortunate that the widow like the petitioner is required to go from door to door and seek justice and even after obtaining the orders from Court of a competent jurisdiction, having succession certificate in her favour as well and production of the said order before the railway authorities and despite all this there is a failure on the part of the railway authorities to pay the dues. It is equally unfortunate that the government servants who are dealing with the matters of other government servants who are now deceased, forget the fact that they themselves being the government servant may face the same situation in their cases also. It is therefore important that the government servants must obey the orders passed by this Court, and should not withhold the amount wrongfully and illegally and refuse to make payment in spite of succession certificate being issued by the Court. In that light of the matter, in my view, it is necessary that the amount must be now permitted to be paid to the petitioner with interest at the rate of 12% per annum. To saddle the Union of India with such interest burden would be unjust because it is the wrongful inaction on the part of the officer

concerned which has resulted in the present situation. Therefore, in my opinion, it is necessary that the interest claim be paid either by the concerned officers of the Union of India.

12. However, the learned counsel appearing for the Union of India has taken up the following pleas. The first plea he has taken is that the motion as originally filed against the Divisional Office, Central Railway, Personnel Branch CST, Mumbai, is not maintainable because the Divisional Office is not a legal entity and the motion ought to be in the name of Union of India. The second contention raised by the learned counsel for the respondent is that this Court has no jurisdiction to grant relief as prayed for in the motion because it is tantamount to execution of an order passed by this Court and the Testamentary Court did not have jurisdiction of executing the orders passed by this Court and motion for such relief is not maintainable and is liable to be dismissed. The third contention raised by the learned counsel for the respondents is that this Court has no jurisdiction in view of Section 28 of the Central Administrative Tribunals Act, 1985 as according to him, the Central Administrative Tribunal has an exclusive jurisdiction since the claim pertains to the service of the deceased government servant and in his opinion the same pertains to service matters and, therefore, this

Court has no jurisdiction. It is most unfortunate that the learned counsel appearing for the Union of India is seeking to raise such hyper-technical contentions to defeat the substantial justice in favour of the petitioner herein.

13. Now I shall deal with the said hyper-technical contentions. As far as the first contention is concerned, the same does not survive as the motion has been since amended and the Union of India has been added as a party respondent and the service having been waived by the learned counsel for the Union of India. I however gave a fresh opportunity to the learned counsel appearing for the Union of India to prosecute the matter and I heard him once again. Thus, the said objection does not survive and the same is accordingly overruled.

14. In so far as the second contention is concerned, I find that the same is equally misconceived. I am of the opinion that the motion is moved for a direction that the Union of India must accept the succession certificate which has been issued by this Court. The Union of India is duty bound to accept the said succession certificate and on failure to do so, the testamentary court who has issued the succession certificate is entitled to issue a direction to accept such a succession certificate and the consequence must follow

accordingly. The argument that the motion tantamounts to execution proceedings is totally unsustainable because it is not an application for execution of any decree which can be executed. There is difference between executable decree and declaratory decree as held by the Division Bench of this Court in Appeal No. 210 of 1990 in Writ Petition No. 1012 of 1989 that the issuance of succession certificate is a merely declaratory decree which is not executable. In view thereof, it is not possible for me to accept the contention of the learned counsel for the respondents herein. However, the learned counsel for the respondent has contended that if it is a declaratory decree then the remedy of the petitioner is to file a writ petition and not to move the present motion. I am not inclined to accept the contention of the learned counsel for the respondent to relegate the petitioner to file a writ petition and perpetuate the injustice in the present case. It is well settled that the procedural law is made for advancement of substantial justice and not to obstruct the same. In my view, this Court having issued the succession certificate is empowered to issue directions to the authorities to obey the said succession certificate and comply with the same. It is unfortunate that such unjustified contentions are coming not from an individual but from a State which is supposed to be a Welfare State. In that view of

the matter, I am unable to accept the contention of the learned counsel for the respondents and I reject the same accordingly.

15. In my opinion, the provisions of section 28 of the Central Administrative Tribunals Act, 1985 do not apply to the facts of the present case. The same apply to the master servant relationship. The employee is dead. The master servant relationship has come to an end. In my opinion, the widow is neither a person employed nor an ex-employee and, therefore, her rights can be enforced by filing appropriate proceedings in the Court of appropriate jurisdiction. Thus, reliance placed on section 28 is misplaced and without any merit.

16. Now, this takes me to the next contention that the respondents were acting very cautiously in not paying the money. As I have stated above such an overcautiousness is not permissible once there is an order passed by the competent court. This court having issued a succession certificate the railway authorities were bound to obey and comply with the same. The contention that the succession certificate was issued without impleading Mrs. Mangala Awad as a party is equally unsustainable because Mrs. Mangala Awad having known that such succession certificate having been issued, could have approached this Court and in fact approached

this Court but did not prosecute the said misc. petition. In view thereof, the contention of the learned counsel for the respondent that the railway authorities were very cautious is without any merit and is required to be rejected accordingly.

17. Coming to the amount, I am of the opinion that the amount which has been deducted as per the letter dated 6.6.2002 is correct and the petitioner is entitled only to the balance amount. However, the learned counsel has deposited in this Court the amount of Rs. 1,71,000/- in place of Rs. 1,81,000/-. After taking into consideration the recovery set out in the said letter dated 6.6.2002, the learned counsel has contended that the said amount of Rs. 10,000/- was further deducted towards estimated electricity charges. I have gone through the Rules which are referred to before me by the learned counsel for the respondents herein. I do not find any rule under which the respondents are entitled to deduct any electricity charges from the dues of the deceased. The learned counsel for the respondents states that the amount has been deducted as ad hoc. I, therefore, direct the respondent to deposit the sum of Rs. 10,000/- wrongly deducted in this Court within a period of two weeks from today. I also direct the Union of India to deposit interest @ 12 % per annum on the aforesaid amount of Rs. 1,81,000/- from 30.7.2001 to March 2004 during which

period the amount payable to the petitioner has been wrongfully withheld. The amount of interest also shall be deposited within a period of two weeks from today. The Union of India will be at liberty to effect recoveries of such interest amount from the concerned officers who have committed defaults in releasing the payment in spite of production of the succession certificate of this Court in accordance with law.

18. In view of the fact that this matter was heard on number of occasions and the Union of India in place of accepting the fact that the payment ought to have been effected, the Union of India has raised most hyper-technical issues pertaining to the maintainability of the motion and jurisdiction of this Court. In my opinion, such issues which are raised are not only frivolous but without any merit but were with further intention to defeat the rightful claim of the petitioner. In the aforesaid circumstances, I am of the opinion that the present notice of motion is required to be made absolute. I make the motion absolute in the aforesaid terms. On such entire deposit being made, the petitioner will be entitled to withdraw the said amount with interest accrued, if any, and the respondents are directed to pay the costs of the present notice of motion quantified at Rs. 10,000/- to the petitioner herein.